



Order under Section 31 Residential Tenancies Act, 2006

Citation: Matinet v Thunder Bay District Social Services Administration Board, 2023 ONLTB 26359

Date: 2023-03-29

File Number: LTB-T-002665-22

In the matter of: 609, 120 CUMBERLAND ST S
THUNDER BAY ON P7B5R7

Between: Candace Matinet Tenant

And

Thunder Bay District Social Landlord
Services Administration Board

Candace Matinet (the 'Tenant') applied for an order determining that the Thunder Bay District Social Services Administration Board (the 'Landlord') changed the locks on the rental unit without providing the Tenant with replacement keys, and substantially interfered with the Tenant's reasonable enjoyment of the rental unit or residential complex.

This application was heard by videoconference on March 9, 2023. The Tenant and the Tenant's representative, Molly MacDonald, attended the hearing. The Landlord's agent, Betty McConkeyKennelly, also attended the hearing.

Determinations:

1. On January 14, 2022, the Tenant filed a T2 application (T2) pursuant to s. 29(1) of the *Residential Tenancies Act, 2006* (the 'Act') seeking to move back into her unit, a fine for the Landlord, and compensation for general damages, as a result of the Landlord changing the locks on her rental unit and substantially interfering with her reasonable enjoyment of the unit.
2. The Tenant moved into the rent-geared-to-income unit on November 1, 2019, and ceased to reside at the unit on March 7, 2021. The monthly rent was \$145.00 and there was no rent deposit.
3. The Tenant alleges that on March 23, 2021 the Landlord changed the locks on the unit without providing her with replacement keys, and also unlawfully terminated her tenancy.

The Tenant alleges that through these actions the Landlord substantially interfered with her reasonable enjoyment of the rental unit.

4. I am satisfied that all the allegations in paragraph 3 above can be considered as they occurred less than one year before the application was filed.
5. At the hearing, the parties agreed on the following facts:
 - (a) There was a fire in the rental unit on March 3, 2021, and the Landlord advised the Tenant not to return to the unit;
 - (b) The Tenant returned to the unit and resided in the unit until March 7, 2021;
 - (c) The Landlord sent a letter of trespass notice to the Tenant on March 23, 2021 claiming the tenancy contract was frustrated as a result of the fire, pursuant to s. 19 of the *Residential Tenancies Act, 2006* (the 'Act'), and the tenancy was therefore terminated;
 - (d) The Landlord changed the locks to the unit on approximately March 23, 2021 without providing the Tenant with replacement keys;
 - (e) The Board never ordered a termination of this tenancy or an eviction of the Tenant;
 - (f) The unit was completely restored by the Landlord from March 23, 2021 to November 26, 2021. New tenants moved into the unit on November 26, 2021; and
 - (g) The Landlord did not offer the Tenant a resumption of her tenancy on November 26, 2021 after the unit had been restored.

Tenant's Evidence

6. The Tenant testified that she did not start the fire in her unit on March 3, 2021. The Tenant explained that she had left the unit momentarily, and when she returned, there was a fire in her kitchen. The Tenant stated that she does not know how the fire started.
7. The Tenant's representative submitted that the Landlord placed a \$25,000.00 deductible on the Tenant's rent ledger to pay for damages associated with the unit fire, and as a result of this deductible, the Tenant is barred from accessing community subsidized housing in Thunder Bay.
8. The Tenant testified further that since being locked out of her unit she has been sleeping in a homeless shelter because she has no other available accommodation. The Tenant

explained that she suffers from mental illness, and as a result, she is unable to get a job and relies on *Ontario Disability Support Program* payments as her sole source of income.

Landlord's Evidence

9. The Landlord's agent, Betty McConkey-Kennelly, who is the Supervisor Property Manager for the Landlord, testified that on March 3, 2021 at approximately 2:22 am, there was an unattended cooking fire on the stove in the unit that damaged the unit extensively, making it uninhabitable. The Landlord submitted a photo of the kitchen, taken on March 3, 2021, showing extensive fire damage from a fire that appeared to originate on the kitchen stove. The Landlord's agent stated that the fire was not the fault of the Landlord, and there was no determination that the fire was the fault of the Tenant; however, the fire started in the Tenant's unit and the Tenant was present when the Landlord attended the unit on March 3, 2021.
10. The Landlord's agent testified further that although the Tenant had fire insurance at the start of the tenancy on December 1, 2019, this insurance had lapsed, and the Tenant had no tenant's insurance covering fires on the date of the unit fire, even though tenant's insurance covering fires was mandatory in accordance with the tenancy agreement signed by the Tenant on November 4, 2019. The Landlord submitted the tenancy agreement to the Board with paragraph 7i listing the requirement for tenant's insurance.
11. The Landlord's agent stated that the tenancy was terminated and the unit locks were changed on March 23, 2021, on the basis that the Landlord's tenancy agreement with the Tenant was frustrated – pursuant to s. 19 of the Act. The Landlord submitted a letter dated March 23, 2021 sent by the Landlord to the Tenant advising her that her tenancy was terminated pursuant to s. 19 of the Act.
12. The agent explained that as a result of the unit fire and the Tenant's lack of insurance, the Landlord incurred expenses of \$26,131.43 to restore the unit over the period of March 23, 2021 to November 26, 2021. The Landlord submitted invoices of these expenses.
13. The Landlord's agent stated further that when the unit restoration was complete on November 26, 2021, the Landlord did not offer the Tenant a resumption of her tenancy. The agent explained that she did not have any contact information for the Tenant, nor did the Tenant approach the Landlord directly anytime after the fire seeking a resumption of her tenancy.

Analysis – Frustration of Contract

14. Section 19 of the Act states:

The doctrine of frustration of contract and the *Frustrated Contracts Act* apply with respect to tenancy agreements.

15. In *Barnaby v. Salamander Opportunities et al*, 2018 ONSC 5749, the Divisional Court held that the following articulation by the Board to determine frustration of contract was correct. For a contract to be frustrated, all of the following must be satisfied for the doctrine of frustration to apply:
- (a) There is an unexpected event that was not foreseeable or contemplated in the contract; **and**
 - (b) The unexpected event was not the fault of either party; **and**
 - (c) The unexpected event drastically changed the nature of the contract so that it is impossible, not just difficult or expensive, to perform the obligations under the contract. The impossibility of performance must be of a long-term nature and not temporary or transient.
16. The Board determined in *TET- 67067-16 (Re)*, 2016 CanLII 72234 (ON LTB), and *SWT15411-18-AM (Re)*, 2018 CanLII 88487 (ON LTB), that fire or flood provisions in a tenancy agreement establish that a fire or flood is a reasonably foreseeable event.
17. On the basis of the evidence provided, I am satisfied that the Landlord required the Tenant to have tenant's insurance that included fire insurance. I therefore find that the fire in the unit on March 3, 2021 was reasonably foreseeable and not unexpected.
18. On the basis of the evidence provided, I am unable to determine that the fire on March 3, 2021 was neither the fault of the Landlord or the Tenant. The Landlord did not establish that the Tenant was not at fault for the fire.
19. On the basis of the evidence provided, I am satisfied that the unit was not utterly destroyed by the fire, but rather extensively damaged and successfully restored over a period of eight months. I therefore find that it was not impossible for the parties to perform their obligations under the contract on a long-term basis. I find that the impossibility of performance was temporary and transient for a period of eight months only.
20. For the Landlord's use of s. 19 of the Act, the Landlord must establish, on a balance of probabilities, that all three requirements listed in paragraph 15 above are met. The Landlord did not prove requirements 15(a), 15(b), and 15(c). I therefore find that the tenancy agreement was not frustrated by the fire in the unit on March 3, 2021, and accordingly the doctrine of frustration and s. 19 of the Act do not apply to this matter.

Analysis – Tenancy Termination, Changed Locks, and Substantial Interference

21. It should be noted that even if the tenancy agreement had been frustrated by the fire in the unit, in the absence of an order issued by the Board, this would not result in termination of the tenancy. Pursuant to s. 37(1) of the Act:

A tenancy may be terminated only in accordance with this Act.

22. I am satisfied that on March 7, 2021 the Tenant ceased to reside in the unit; however, the Tenant did not vacate or abandon the unit on March 7, 2021, and retained occupancy of the unit on the day the Landlord changed the unit locks. Both the Landlord and the Tenant agreed that the Landlord changed the locks to the unit on approximately March 23, 2021 without providing the Tenant with replacement keys. I therefore find that the Landlord breached their obligations pursuant to s. 24 of the Act.
23. When the locks were changed there was no agreement to terminate the tenancy, neither party had served a valid notice to terminate, and there was no order terminating the tenancy. I therefore find that there was no termination of the tenancy on March 23, 2021.
24. Section 39 of the Act also limits the Landlord's ability recover possession of the rental unit, and states:
- A landlord shall not recover possession of a rental unit subject to a tenancy unless,
- (a) the tenant has vacated or abandoned the unit; or
- (b) an order of the Board evicting the tenant has authorized the possession.
25. I note that if the Landlord required possession of the unit for extensive repairs, serving the Tenant an N13 Notice of Termination for Repairs, pursuant to s. 50 of the Act, would have been appropriate.
26. Accordingly, in the absence of an order issued by the Board evicting the Tenant or evidence that the Tenant either abandoned or vacated the rental unit, I find that the Landlord unlawfully evicted the Tenant on March 23, 2021. The Landlord improperly regained possession of the rental unit and effectively evicted the Tenant from the unit without complying with the statutory process and obtaining the requisite order. As a result of these actions, I am satisfied that the Landlord substantially interfered with the Tenant's reasonable enjoyment of her rental unit. I therefore find that the Landlord breached their obligations pursuant to s. 22 of the Act.

Remedies

27. The Tenant is seeking the following remedies:
- (a) The Landlord must allow the Tenant to move back into the unit or a similar rentgeared-to-income unit;
- (b) The Landlord must pay an administrative fine to the Board; and
- (c) The Landlord must pay compensation of \$5,000.00 to the Tenant for general damages of mental and emotional stress, and loss of housing.

28. In determining the appropriate remedy, I must also apply s. 16 of the Act to consider whether the Tenant took reasonable steps to mitigate her loss of enjoyment of the rental unit as a result of the Landlord's substantial interference.

Moving back to the Residential Complex

29. The Tenant's unit was rented to another tenant on November 26, 2021, and this unit remains rented. The Board has no jurisdiction within s. 31(1)(f) of the Act to order the eviction of an existing tenant, without notice or agreement, for the purpose of reinstating the Tenant in her original unit.
30. Similarly, the Board has no jurisdiction under s. 31(1)(f) of the Act to order the Landlord to provide an alternate rent-geared-to-income rental unit to the Tenant. The tenancy agreement breached by the Landlord is an interest in "land", and thus is tied to the specific rental unit listed in the agreement – unit 609. Covenants run with the land – in this case unit 609. The tenancy agreement signed by the Tenant on November 4, 2019 is not a personal contract that is transferable to other rental units in the residential complex.
31. Accordingly, for the reasons provided in paragraphs 29 and 30 above, the Tenant's request for an order directing the Landlord to allow the Tenant to move back into unit 609, or another similar unit, is denied.

Administrative Fine

32. The Tenant requested that the Board issue an administrative fine to the Landlord on the basis of the Landlord's improper use of s. 19 of the Act to terminate the Tenant's tenancy.
33. An administrative fine is a remedy used by the Board to encourage compliance with the Act, and to deter a landlord from breaching the Act in the future, if other remedies will not provide adequate deterrence and compliance. In this matter, I am satisfied that the determinations provided in this order, and the remedy provided to the Tenant, are sufficient to deter the Landlord from breaching the Act with similar activity in the future. I therefore find that an administrative fine is not required to encourage the Landlord's compliance. Accordingly, the Tenant's request for the Board to issue an administrative fine to the Landlord, pursuant to s. 31(1)(d) of the Act, is denied.

General Damages

34. The Tenant is seeking payment from the Landlord of general damages of \$5,000.00 for mental and emotional distress, and the loss of stable housing since being unlawfully evicted from her unit since March 23, 2021. I am satisfied that the Tenant has resided in

community homeless shelters since being unlawfully evicted by the Landlord on March 23, 2021, and has to the best of her abilities, through seeking accommodation in shelters, mitigated her loss of enjoyment of the rental unit pursuant to s. 16 of the Act.

35. I am also satisfied that as a result of the Tenant's modest income from ODSP, and her mental health ailments, the Tenant is particularly vulnerable to housing dislocations and has suffered significant emotional distress as a result of her unlawful eviction. The Landlord did not offer to accommodate the Tenant in another unit after unit 609 required restoration, nor did the Landlord actively seek to reinstate the Tenant in her unit when it was restored on November 26, 2021. I find that the lack of these actions by the Landlord further diminished the Tenant's emotional resiliency. For these reasons, and those listed in paragraph 34, I find it appropriate and reasonable to grant the Tenant's request for the Landlord to pay the Tenant general damages of \$5,000.00, pursuant to s. 31(1)(f) of the Act.

36. This order contains all of the reasons in this matter and no further reasons will be issued.

It is ordered that:

1. On or before April 30, 2023, the Landlord shall pay to the Tenant \$5,000.00 in general damages.
2. If the Landlord does not pay the Tenant the full amount owing by April 30, 2023, the Landlord will owe interest. This will be simple interest calculated from May 1, 2023 at 5.00% annually on the balance outstanding.
3. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

March 29, 2023

Date Issued

Frank Ebner

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

